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**Case No.: 2:16-cv-01443-AKK**

**DRUMMOND COMPANY, INC.’S MOTION FOR SUMMARY  
JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, defendant Drummond Company, Inc. (“DCI”) moves the Court for summary judgment in its favor, dismissing all of plaintiff’s claims against DCI with prejudice, because there is no genuine issue of material fact and because DCI is entitled to judgment as a matter of law on the following grounds:

1. Plaintiff's claims are barred on the separate and individually sufficient grounds of limitations, laches, compliance and release, and the doctrines of "grandfathering" and/or reliance.

a. All of plaintiff's legal, injunctive, and declaratory claims are barred by the statute of limitations or repose, 28 U.S.C. § 2462.

b. Plaintiff's claims are barred by the doctrine of laches.

c. DCI's compliance with ASMC's and ADEM's requirements and the agencies' releases bar plaintiff's claims.

d. Plaintiff's claims are barred by the doctrines of "grandfathering" and reliance.

2. Plaintiff's RCRA claim must be dismissed because RCRA does not apply.

a. SMCRA provides the basis for regulation of the Maxine property, not RCRA.

b. As plaintiff's ten-year delay proves, there is no actual evidence of an imminent and substantial endangerment to health or the environment.

3. DCI incorporates by reference its Brief in Support of Motion for Summary Judgment and its Evidentiary Submission in Support of Motion for Summary Judgment in their entirety.

WHEREFORE, DCI requests that its motion for summary judgment be granted and that all counts of plaintiff's Second Amended Complaint [Doc. 24] be dismissed with prejudice. DCI further requests costs, attorneys and expert fees, and such other relief as the Court may award.

Respectfully submitted,

/s/ Richard E. Davis

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion for Summary Judgment has been filed with the Clerk of the Court using the CM/ECF system which is supposed to send electronic notification of such filing to counsel of record and that this document has also been transmitted in electronic form to the e-mail address indicated for counsel below:

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This 15th day of August, 2018.

/s/ Richard E. Davis  
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Of Counsel